

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216146

DATE: October 11, 1984

MATTER OF: Asgard Technology, Inc.

DIGEST:

Where a solicitation required submission of bid samples with the bid to determine compliance with a specification requirement, a bid not accompanied by the samples was properly rejected as nonresponsive.

Asgard Technology, Inc. protests the Environmental Protection Agency's (EPA) rejection of its bid as nonresponsive under invitation for bids (IFB) No. WA84-D758 for Lexitron compatible diskettes. We deny the protest summarily.

EPA found Asgard's bid nonresponsive for failure to supply required bid samples, failure to bid on the two contract option periods, and failure to acknowledge an IFB amendment. Asgard argues that its bid should not have been rejected because the requirement for submission of bid samples was not prominently placed in the IFB, there was no requirement for bids on the option periods, and Asgard did not receive the amendment it failed to acknowledge.

Section M of the IFB, entitled "Evaluation Factors for Award," provided in part that:

"The Government will award a contract resulting from this solicitation as stated in the 'Contract Award' provision.^{1/} The other factors that will be considered are:

^{1/} The contract award provision provided for award to the responsive, responsible bidder or bidders offering the lowest overall price for the maximum quantity of all contract line items in the base period and two option periods.

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a. Successful testing of bid samples as set forth below in clause M.2 . . ."

Clause M.2 was entitled "Testing of Bid Samples" and required that, for testing purposes, bidders provide with their bids a sample of each item included in the bid. The clause also stated that the failure of a bid sample to demonstrate its compatibility with the Lexitron 1303 Text Editor during the test would render the bid nonresponsive.^{2/}

A bid must represent an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation, and any bid which deviates from those terms is nonresponsive and must be rejected. Surgical Instrument Company of America, B-213591, Apr. 17, 1984, 84-1 CPD ¶ 433. Where the language of an invitation clearly states that a sample must be submitted with the bid, the failure to do so generally is a material deviation which renders a bid nonresponsive. Id.

Here, the solicitation clearly required that bidders submit samples with their bids for testing to determine compliance with the specification requirement for Lexitron compatible diskettes. Since Asgard did not submit the required samples with its bid, the agency properly rejected the bid as nonresponsive.

In this connection, we find no merit to the protester's assertion that its failure to supply the bid samples should be excused because the requirement for their submission was not prominently placed in the IFB. While the requirement did appear on the last page of the IFB, it was by no means obscure. As previously noted, it was contained in a clause clearly labeled "Testing of Bid Samples" which was one of three clauses in the "Evaluation and Award Factors" section of the IFB. We believe EPA was reasonable in its apparent assumption that any prudent

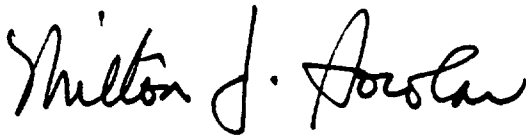
^{2/} The IFB specifications required that the diskettes be fully compatible with the Lexitron 1303.

B-216146

bidder would read this obviously important section of the IFB with care, and we fail to understand how any bidder who did so could miss the requirement for submission of bid samples with the bid.

Asgard's failure to submit the bid samples is itself an adequate basis for denying Asgard's protest since even if it prevailed on the other issues raised, its bid would still be nonresponsive and could not be accepted. See Interface Flooring Systems, Inc., B-206399 et al., Apr. 22, 1983, 83-1 CPD ¶ 432. Accordingly, we find it unnecessary to decide the other issues presented.

The protest is summarily denied.

for 
Comptroller General
of the United States